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Monsignor Thomas J. Harrington

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A CIVIL LITIGATION AT ANTIOCH IN THE THIRD CENTURY “THE UNLIKELY CASE OF THE CHURCH BUILDING”

MONSIGNOR THOMAS J. HARRINGTON, J.C.L.*

During the first three centuries of the Christian era, many local ecclesial communities sprang into being throughout the Empire of Rome. These communities, predominantly located in the urban areas, were slow to construct or convert buildings into the custody and control of church officials. There are several plausible explanations for this delay. For example, the expectation of an imminent *eschaton* may have contributed to this reticence. Also, perhaps it was the relative lack of material resources, coupled with the desire to apply the limited funds to more immediate, practical, charitable endeavors that contributed to the virtual absence of “church buildings.” It would seem, however, that the principal reason for the lack of initiative was rooted in the uncertain civil-legal status of the churches. As *collegia illicita*, the Christian communities and congregations were bereft of civil-legal *caput* in which ownership could be vested, or otherwise defended against adverse claims and interests in the prevailing legal system.

Despite this formidable handicap, by the middle of the third century, church authorities were forced to undertake at least some tentative initiatives in the construction of church buildings.

* Pastor, Holy Name Parish, New Bedford, Mass. A.B., College of the Holy Cross; J.C.L., Catholic University of America, School of Canon Law. The author served fifteen years as Chancellor of the Diocese of Fall River.

The most clearly documented and, perhaps the most celebrated of these initiatives concerns a building in Antioch, which became the focal point of a very unusual and significant controversy.

Toward the end of the third century, incidents having all the ingredients of a gripping drama began to unfold in and around Antioch. These events involved a dynamic interplay of strong conflicting personalities which had a significant impact on both secular and ecclesiastical history, doctrines of heresy and orthodoxy, civil law, church organization, and discipline.

PAUL OF SAMOSATA—HIS RISE AND EXCOMMUNICATION AT ANTIOCH

With the assassination of Alexander Severus in the year 235 A.D., the Roman Empire plunged into a season of chaos and disaster which prevailed until the accession of Diocletian to the *imperium* in 285 A.D.¹ With the exception of Alexander Severus, the ruling Severi adopted a policy of "state terrorism" which was enforced by the military regime. Plague, civil strife, external war and the caprice of the army contributed to the instability of the Empire, which ended in the year 260 with the capture by the Persians of Valerian. At this time, King Odenathus of Palmyra² was successful against Persian forces, winning a stunning military victory in the Euphrates region and establishing a solid, albeit temporary, hegemony in a considerable area of the eastern empire. Antioch became the seat of power when the local dynast ceded effective rule in the region to his son, Vaballathus. Vaballathus was deeply influenced by his wife, Queen Zenobia, an ambitious woman with a forceful spirit. For twelve years, the region was dominated by the political influence of the Palmyran rulers, particularly that of Queen Zenobia. In the year 272 A.D., Queen Zenobia's army was defeated for the first time by the legions in a pitched battle near Antioch. Soon thereafter, her army was thoroughly routed in a clash near Eura. Zenobia herself was taken prisoner and sent to Rome, never to be heard

¹ Two magisterial works on Roman law and history have been of particular utility in interpreting the events mentioned here. See generally H.F. JOLOWICZ & B. NICHOLS, *HISTORICAL INTRODUCTION TO THE STUDY OF ROMAN LAW* (2d ed. 1967) [hereinafter *HISRL*]; M.I. ROSTOVITZEFF, *THE SOCIAL AND ECONOMIC HISTORY OF THE ROMAN EMPIRE* (P.M. Fraser ed., 2d. 3d. 1957) [hereinafter *SEHRE*].

² The oriental despot from Asia Minor was ruler of Samothrace and quite unlike the rash and humiliated emperor who was his contemporary.

from again. From 260 A.D. to 272 A.D., when Odenathus, Vabalathus, and Zenobia exercised civil, secular power in and around Antioch, extraordinary ferment developed in the local Christian community.

From early on, Antioch had been a vibrant center of Christian life and development. Specifically, Antioch was where the disciples were first called "Christians."³ Although Peter and Paul were the "pillars" upon which the community of Christians in Antioch was founded, a strong case has been advanced that the monarchical episcopate developed at Antioch. In fact, by the beginning of the second century, Ignatius of Antioch had become a principal exponent of the form of ecclesiastical organization which focuses upon the episcopate.⁴

Paul of Samosata then became bishop of Antioch. He was a charismatic individual whose episcopate was marked by controversy attached both to his lifestyle⁵ and to his theological positions.⁶ The ecclesial leaders who participated in a synodal gathering at Antioch in 268 prepared a circular letter which provided a graphic portrayal of his personal behavior.⁷ Because of the authors' ill-will towards Paul, allowances must be made for exaggeration in the description of Paul within the circular letter. Nonetheless, Paul of Samosata was definitely a colorful and patently controversial character. He possessed a keen political sense, and ingratiated himself with the ruling faction, especially Queen Zenobia. For his efforts, Paul was appointed *ducenarius*, a civil procurator with an annual remuneration of 200,000 sesterces. His ecclesiastical opponents claimed that he relished in his secular prominence and preferred to be addressed by his civil title rather than as "bishop."⁸ When he traveled through the streets of Antioch, Paul was accompanied by a formidable entourage, including a corps of bodyguards. His opponents alleged that he was habitually accompanied in his meandering by two attractive female com-

³ Acts 11:26 (Douay Rheims).

⁴ See RAYMOND E. BROWN & JOHN P. MEIER, *ANTIOCH AND ROME* 12-86 (1983).

⁵ See EUSEBIUS, 2 *THE ECCLESIASTICAL HISTORY AND THE MARTYRS OF PALESTINE* 7, 30, 6-16 (Hugh J. Lawlor & John E. Oulton trans., 1928) [hereinafter 2EHMP]; see also J. STEVENSON, *A NEW EUSEBIUS: DOCUMENTS ILLUSTRATIVE OF THE HISTORY OF THE CHURCH TO 337 A.D.* (1993) [hereinafter ANE].

⁶ See JOHN N.D. KELLY, *EARLY CHRISTIAN DOCTRINES* 117-19, 158-60 (2d ed. 1968) (providing excellent resume of theological positions of Paul of Samosata).

⁷ See EUSEBIUS, *THE HISTORY OF THE CHURCH FROM CHRIST TO CONSTANTINE* 315-18 (G.A. Williamson trans., 1965) [hereinafter WILLIAMSON].

⁸ *Id.* at 316.

panions "in the flower of youth and beauty." Paul's critics, however, stopped short of direct accusations of promiscuity, perhaps content to allow inferences to be drawn from their unflattering descriptions.

According to his critics, Paul was attracted to "luxury and surfeit," going so far as to exaggerate the size and trappings of his *cathedra*, suggesting proportions as grand as the secular *secretum* or tribunal platform. They alleged that Paul would strut, gesticulate, and generally "perform," seeking unbridled responses from those who gathered precisely to witness such antics. Enthusiastic partisans, it is said, would habitually jump, applaud, shout, and wave handkerchiefs amidst the liturgical celebrations. Paul was said to have instructed the musicians serving the congregation to cease singing psalms to Jesus, while encouraging women in the assembly to sing paeans of praise to him "in the middle of the church on the great day of Pascha!"⁹

Apparently, Paul of Samosata was able to enlist the favor and cooperation of at least some of the clergy, local presbyters and deacons, and even some *episcopoi* from the regions surrounding Antioch. It is suggested that such people supported Paul because those who manifested loyalty to him often found that they were rewarded monetarily.

Apart from his extravagant and colorful demeanor, Paul provoked anxiety and dismay in orthodox ecclesiastical leaders because of certain theological interpretations and preaching. While there are no extant remnants of his writings, authorities¹⁰ generally agree that Paul was an "adoptionist" and probably a "unitarian." Thus, his theology placed him amidst the controversies developing in the Christian community, touching upon both christological and trinitarian doctrine. In Paul's teachings about the redeemer, it appears that he considered Christ to be "mere man" (*ohiulkos anthropos*), pre-eminently endowed with supernatural qualities. He saw Jesus as one *allos*, or entity, and the Word as another distinct and separate *allos*. Thus, it seems that Paul did not consider the Word to be either *ousia* or *hypostasis*. Posthumously, Paul was accused of planting the seed for the Nestorian view that Mary was not "mother of the Word." In all fairness, however, it must be acknowledged that at the time Paul was

⁹ See *id.* at 317.

¹⁰ See KELLY, *supra* note 6, at 117.

writing and preaching, "classic" christological and trinitarian doctrine had not yet been formulated. Although his detractors accuse him of being a charlatan, in at least some of his theological endeavors, Paul did manifest intuition and depth. Later writers, including Athanasius¹¹ and Hilary,¹² attribute thoughtful, if theologically imprecise, insights to him in commenting upon his use of the *homo-ousia* concept. One authoritative contemporary commentator¹³ suggested that Paul analogized the relationship between Father and Son to the melding of different metals in a single coin, a rather ingenious and somehow appealing pedagogical device. Nevertheless, there is ample evidence that Paul of Samosata subscribed to views and interpretations of the core mysteries of the Christian faith which were decidedly unorthodox.

In particular, it was Paul's "adoptionism" which provoked the greatest concern from the orthodox ecclesiastical leaders of the region surrounding Antioch. These leaders tended to depend upon the Christian writer Origen¹⁴ for their understanding of the mystery of the incarnation. Domnus and other leaders of this faction convened a synod at Antioch in 268 to discuss Paul's heresy. Those responsible for planning the synod believed that the presence of Dionysius, the bishop of Alexandria, was very important because he was well-respected and was a forceful proponent of orthodoxy. Dionysius, however, was unable to attend due to illness. He did, nonetheless, send a letter of encouragement to those who assembled for the synodal deliberations.

When the synod convened in Antioch, approximately twenty-eight bishops serving as representatives of the local communities of Christians were present. As "origenists," the bishops who assembled might themselves have been accused of holding questionable christological views had the debate been pressed further. The focus of the deliberations was instead directed at Paul's "adoptionist" posture, placing him in a vulnerable position, despite his cheerful acceptance of the challenge to defend his theological positions.

Malchion, a local presbyter who headed one of the schools of

¹¹ ATHANASIUS, ON THE COUNCILS OF ARIANISM AND SELEUCEIA 45, cited in ANE, *supra* note 5, at 279, n.240.

¹² HILARY, DE SYNODIS 81, cited in ANE, *supra* note 5, at 279 n.240.

¹³ GEORGE L. PRESTIGE, GOD IN PATRISTIC THOUGHT 1, 201-09 (1964).

¹⁴ See KELLY, *supra* note 6, at 58-59; see also *id.* at 130-36, 235 (explaining Origen's theory that "the Father, Son, and Spirit" are distinct, separate hypostases).

rhetoric in Antioch at the time, was selected to serve as chief spokesman for the participating bishops during the synod. Malchion quickly established himself as a vigorous "prosecutor" and as such, proved to be a wise selection. It is apparent, from the records which have been retained,¹⁵ however, that Paul emerged as a worthy opponent. During his interrogation by Malchion, Paul responded with considerable rhetorical skill, skirting admissions which would portend heretical beliefs wherever possible. Relying on his formidable political skills and personal charm, Paul expected to seduce his ecclesiastical opponents into the conclusion that allegations of his "heretical" leanings were unfounded. If such was Paul's strategy in cooperating with the synodal process, he must have been bitterly disappointed when the council fathers concluded the synod by adopting a resolution which not only condemned his teachings as heretical, but also branded him a reprobate. A synodal letter which was composed after the deliberations, containing the criticisms of Paul and the condemnation of his theoretical posture, was widely disseminated by the participants in an effort to urge their findings upon others. Among the extensive list of bishops, deacons, and presbyters around the world who received the letter were Dionysius, the bishop of Rome and Maximus, the bishop of Alexandria.

Despite his condemnation by the ecclesiastical synod in 268, Paul retained his powerful secular connections and stood in defiance of the decision reached by the orthodox prelates. He continued to flaunt his political influence, and much to the discomfort of his adversaries, refused to vacate the "church house" at Antioch. Intensifying the controversy generated by Paul's intransigence was his refusal to turn over an additional building possessed by the church¹⁶ following the adverse outcome of the synodal deliberations. Theoretically, possession and occupancy of this structure should have gone to Domnus, the "legitimate" bishop of Antioch.¹⁷ Thus, Paul's adamant refusal to vacate the "common" ecclesial building presented the ecclesiastical leaders with a novel problem—determining the question of legitimate possession of "church property."

¹⁵ H. DE RIEDMATTEN, *LES ACTES DU PROCÈS DE PAUL DE SAMOSATE 1* (Fribourg en Suisse Eds., 1952).

¹⁶ 2EHMP, *supra* note 5, at 7, 19, 30. The descriptive phrase in Greek is *oikon ekklesias*, in Latin, *domo ecclesiae*, (PG v. 20, n. 717-19).

¹⁷ WILLIAMSON, *supra* note 7, at 318-19.

THE PRIVATE STATUS OF "CHURCH PROPERTY" PRIOR TO ANTIOCH

By the time of Paul's incident, which was in the middle of the third century, the church had frequently invoked synods and ecclesial councils for addressing various church problems and concerns,¹⁸ including the discussion and resolution of theological, disciplinary, and pastoral controversies and disputes. They had never before employed these measures to resolve problems, such as those created by Paul, of determining the question of legitimate possession of a "church property." The absence of precedent involving such a mundane concern is not difficult to understand if one considers that prior to that time there were no buildings which could have been identified, without qualification, as "belonging" solely to any of the local churches. Despite its widespread notoriety, growing numbers, and increasingly sophisticated internal structure, the church simply was unable to obtain the civil-legal status necessary to legally enforce its ownership. The Christian congregations were, in essence, regarded as *collegia illicita*¹⁹ and as such were denied the opportunity to collectively hold property except in certain limited circumstances.²⁰

The inability of the churches to exert "common" ecclesiastical control over buildings required that they make alternative arrangements for conducting church services. Accordingly, church services were held in a variety of places including outdoors, the grounds of privately owned cemeteries, and the familial *hypogea* hewn beneath the surface of the earth. However, records of various authorities²¹ suggest that the services were most often held in

¹⁸ The first local "council" at Carthage was held in the year 220. Cyprian exhibited particular enthusiasm for the conciliar expedient or synodal format for discussing and resolving controverted questions, and through the middle decades of the third century, several such gatherings convened.

¹⁹ There is a considerable literature on this point. One of the better sources is P.W. DUFF, PERSONALITY IN ROMAN LAW 114-15 (NY/NJ: Augustus M. Kelley, Publishers/Rothman Reprints 1971).

²⁰ See, e.g., Fernand de Visscher, *La Régime Juridique des Plus Anciens Cimetières Chrétiens à Rome*, 59 ANALECTA BOLLANDIANA 39-54 (1941); George LaPiana, *The Roman Church at the End of the Second Century: The Episcopate of Victor, the Latinization of the Roman Church, the Easter Controversy, Consolidation of Power and Doctrinal Development, the Catacombs of Callistus*, 18 HARVARD THEOLOGICAL REVIEW 1, at 201-77 (1921).

²¹ See generally BROWN & MEIER, *supra* note 4, at 89-210 (dealing with Rome and "house churches").

The historically-significant correspondence, dating from approximately 112 A.D., between Trajan and Pliny regarding Christian assemblies in the vicinity of Nicomedia in Bithynia alludes to the pre-dawn meetings of Christian adherents for prayer and

private homes made available to the community by owners who happened to be members of the Christian congregations.²²

While useful, it was not necessary for church officials to accept the hospitality of those Christians offering use of their private homes for worship and assemblies. This practice had some potentially serious drawbacks. In order for the quarters provided by these individuals to adequately accommodate the growing numbers of the congregation, the sites would have to be spacious. Thus, as the number of followers increased, the homes of the relatively prosperous Christians suited the congregation's needs. Yet, these wealthy people tended to refute their allegiance to Christ during times of persecution (when their material wealth was threatened)²³ or to submit to the heresies of persuasive, charismatic, heterodox leaders,²⁴ presented substantial dilemmas for the

worship on specified days, followed by distinct gatherings later in the day (perhaps the *agape*). Had there been a special building habitually utilized for these assemblies, given the detail of Pliny's report, it would likely have been mentioned.

Dating from the primitive, apostolic times, authorities have identified numerous instances in which New Testament texts refer directly or indirectly to the practice of conducting Christian assemblies for the proclamation of the gospel and for liturgical rites in Christian "households."

²² For a good analysis of the phenomenon of "house churches," see "Églises," *DICTIONNAIRE D'ARCHÉOLOGIE CHRÉTIENNE ET DE LITURGIE* 2279 (1921) [hereinafter *DICTIONNAIRE*]; see also JEAN DANIELOU & HENRI MARROU, *The First Six Hundred Years*, 1 *THE CHRISTIAN CENTURIES* 165-66 (Vincent Cronin trans., 1964) (describing practice). Both Leclercq and Danielou/Marrou identify a recollection of extreme antiquity derived from the so-called *Clementine Recognitions*, 4, 6, where it is reported that a certain Patron put his house and garden in Rome at the disposition of the apostle Peter, with room to accommodate several hundred persons. *Id.* at 166. Johannes Quasten argues persuasively for the assignment of the so-called "Ten Recognitions" to early third century Syria. See generally JOHANNES QUASTEN, *PATROLOGY* (1950). Nonetheless, the point of the recollection has validity as an indication of actual practice. Leclercq comments extensively upon "églises domestiques" and "habitations privées," alluding to documentary texts and to archeological data. See also Floyd V. Filson, *The Significance of the Early House Churches*, 58 *JOURNAL OF BIBLICAL STUDIES* 105-112.

²³ See generally L. WILLIAM COUNTRYMAN, *THE RICH CHRISTIAN IN THE CHURCH OF THE EARLY EMPIRE: CONTRADICTIONS AND ACCOMMODATIONS* at 158-61 (Edwin Mellen Press 1980). In times of persecution, which waxed and waned over the first three centuries, property was frequently confiscated from those who are identified as Christians. Consequently, wealthy Christians were exposed to the grave temptation of abjuring their allegiance to Christ when confronted with official pressures and threats at such times. It would embarrass church leaders to find themselves dependent upon *lapsi* for hospitality in the conduct of a Christian cult.

²⁴ The practice of making private homes available to the broader Christian community continued into the fourth century, up to the very moment when regularization of the civil-legal status of the ecclesial *collegia* was attained. The *Libri Pontificalis*, edited by Theod. Mommsen, *MONUMENTA GERMANICA HISTORICA*, series 9, v. 1, *Gestorum Pontificum Romanorum*, in the chronicle of the episcopate in Rome of Marcel-

Christian leaders seeking to legitimize their faith and to avoid situations which would lead to embarrassment.

Despite the inherent risks in relying on wealthy homeowners, the practice of conducting church services in private homes became prevalent. In due course, many of the private homes which served as places of assembly for the Christian congregations, evolved into the "parish" churches of the day; otherwise known as the *tituli*.²⁵

THE CASE OF THE TAVERN KEEPERS AND THE AMBIVALENT STATUS OF "CHURCH PROPERTY"

Although the issue was never definitively resolved, the strictly private status of "church property" was called into question in a number of incidents prior to the synod at Antioch. Foremost among these incidents is a dispute recorded in Aelius Lampridius' chronicle of the reign of Alexander Severus. The infamous dispute, alleged to have occurred in Rome, involved the ecclesial community of that locale and a group or "college" of tavern keepers who opposed that community's views with respect to the use of a certain property. The dispute focused upon underdeveloped "public land" and concerned officially-sanctioned access to a par-

lus 296-304 A.D., report that there were then twenty-five *tituli* in Rome, organized and administered as a "diocese." Even at that late date, a wealthy Christian widow, Lucina, is reported as having converted her home into an ecclesial site for continued prayer during both night and day: *quae domum suam ... titulam dedicavit ubi noctuque ymnis et orationibus domino Iusu Christo confitebatur*, *Id.* at 43-44.

An interesting archeological discovery of recent date attests to the extension of this expedient from Rome to North Africa. Antonio Ferrua, S.J., *Due Inscrizioni della Mauritania*, 53 *REVISTA DI ARCHEOLOGICA CHRISTIANA* 225-229 (1977), comments on the report given by Février on an inscription emanating from Altava in Mauritania which is ascribed to the year 309 A.D. At the request or command of the local bishop (*ex iussione sancti episcopi*), a church building (*basilica dominica*) was received from one Honoratus, evidently a gentleman of substantial means, in loving memory of his forebears (*memoria beatorum virorum ... L. Honorati ... Tannoni Victoris ... Tannoni Romani ...*). Similarly, as heterodox factions emerged, they were often promoted by charismatic, persuasive heretical leaders. Persons who had been accustomed to making their homes available to the church for assemblies would be ensnared in the heresies and deviant groups with the result that private homes became centers for heterodox assemblies, again to the dismay and embarrassment of orthodox church officials.

²⁵ See LUDWIG HERTLING, S.J. & ENGLEBERT KIRSCHBAUM, S.J., *THE ROMAN CATACOMBS AND THEIR MARTYRS* 22-23 (M. Joseph Costello, S.J. trans., 1956). *Tituli* was a descriptive name used after the Constantinian settlement of the fourth century deriving from the inscriptions which decorated marble plaques, as a means of both identifying the sites and acknowledging the individual or family who had provided the accommodations to the church community.

ticular site.²⁶ According to the reports of Lampridius, the emperor decided the issue in favor of the church congregation;²⁷ thus providing historians with the first documented instance of a civil-legal act by an ecclesial "collectivity."

While the case has sparked rather extensive commentary,²⁸

²⁶ In the *Digest*, Ulpian provides definitions pertaining to the terms utilized by Lampridius in relating the details of Alexander Severus' rescript: a *locus* is not an estate, but only a part; a *fundus* is an integral estate. Following Labeo, Ulpian says, "We mostly regard *locus* as a place without any villa; it can be in an urban setting as well as a country one." *D. 50. 16. 60*.

²⁷ In the *Historia Augustiae*, n. 49, Lampridius writes: "*Quum Christiani quandam locum qui publicus fuerat, occupassent contra propinarii dicerent, sibi eum deberi re-scripsit melius est ut quomodoque illic Deus dedatur.*" The "case" has been explored by many writers in their commentaries. For example, Lampridius, who wrote a full century after the events he describes, was an unabashed and uncritical admirer of Alexander Severus. Due to this admiration, he is not always considered a totally reliable source. See also Ensslin, *The Imperial Crisis and Recovery: A.D. 193-324*, in 12 THE CAMBRIDGE ANCIENT HISTORY (1961) (insinuating that the chronicles are "historical novels"); R.V.N. HOPKINS, *THE LIFE OF ALEXANDER SEVERUS* (1907) (cautioning against uncritical reliance upon Lampridius, who composed his text in the Constantinian era). The incident is neither mentioned by any ecclesiastical historian, nor in secular writings (Dio Cassius, for one, an intimate friend of Alexander Severus, is silent regarding this episode).

It is Lampridius who, in the same chronicle, suggests that Alexander Severus contemplated the erection of a temple to honor Christ ("*Capitolium septimo die quum in urbe esset ascendit; templa frequentavit. Christo templo facere voluit...*"), which, even allowing for the spiritual bent attributed to Alexander Severus, seems a most unlikely development. Lampridius, too, is the source of stories that Alexander Severus had statues of religious figures such as Abraham and Jesus alongside in his personal lavarium. It is difficult to reconcile this report with the aversion existing in Jewish circles for maintaining such representations. See HERTLING & KIRSCHBAUM, *supra* note 25, at 18. In sum, it is widely conceded that Lampridius was in possession of an actual occurrence of a dispute in which the emperor intervened.

²⁸ See Giuseppe Bovini, *La Proprietà Ecclesiastica e La Condizione Giuridica della Chiesa in Età Precostantiniana*, 28 PUBBLICAZIONE DELL'ISTUTO DI DIRITTO ROMANO (1948) (summarizing opinions, including those of Sohn, Neumann, Uhrig, Uhlhorn, and others in commenting upon the incident). While some interpreters postulate that "public authority" recognized in the Christian association, "la capacita di disporre legalmente di una proprieta immobiliare," (which, in Anglo-Saxon legal terms might be identified as *ius standi in iudicium*), Bovini concludes that Severus "dispensed" the Christian collectivity from its corporate incapacity in this particular instance. Ludwig Schnorr von Carolsfeld, *GESCHICHTE DER JURISTISCHEN PERSON* 250 (Munich 1933), stresses that it was as a collective whole and not as disparate Christian individuals who happened to be Christians that the "church" pursued its claim in this instance. Yet, he identifies the time of the regularization of the church's corporate status in the civil-legal system of the empire as concomitant with the Constantine settlement a century after the incident reported by Lampridius. *Id.* at 250-51; Charles Munier, *L'Eglise dans L'Empire Romain (IIe-IIIe siècles): Eglise et Cité*, in 2 HISTOIRE DU DROIT ET DES INSTITUTIONS DE L'ÉGLISE IN OCCIDENT, at 269 (1979) in the section "Le Statut Juridique de l'Eglise et de ses Biens," adopts the view of Duchesne that the case in question is "more about cult than about property" He concludes without equivocation

its significance has been undermined by an alternative, seemingly more plausible explanation. This alternate explanation attributes the favorable imperial decision to an application of the prohibitions set forth in the edict governing public places, which made access to such remedies broadly available.²⁹ Furthermore, it is apparent that the incident did not, in actuality, involve an ecclesial building of any sort. Rather, it seems that Alexander Severus simply took matters into his own hands and issued a rescript mandating that the Christians' plea for access be accorded preference over the claim of a guild of tavern keepers.

The letters of Cyprian regarding the persecution initiated by Valerian in the summer of 268, like Lampridius' documents, also provide references to "places of worship" utilized by the Christian communities. While these letters, written to explain and warn of an imperial rescript which imposed the penalty of confiscation of property on individual Christians,³⁰ mention property, they do so exclusively in terms of "private" ownership by individual Christians and are silent about "church property" per se.³¹ The imperial order indicated that the property which had been placed in jeopardy was that belonging to individual persons who steadfastly adhered to the Christian faith, not to the church as a collective order.

Following the humiliation of Valerian in the debacle at Edessa in 260, the succeeding emperor, Gallienus, published imperial constitutions which called for the termination of the perse-

that the incident had no bearing on the juridic condition of the ecclesial collectivities which remained *collegia illicita*.

²⁹ In the *Digest*, there is a pertinent citation from Book 68 of Ulpian's commentary on the edict. The remedy to enjoin activities in public places which gave rise to any instance of harm was perpetually available to "any member of the public" from the magistrate, with condemnation determined in accordance with the plaintiff's interest. "Public places serve both public and private uses... (all) have as much right to enjoy them as anyone." *D. 43. 8. 2-5*.

³⁰ CYPRIAN, *The Letters of St. Cyprian of Carthage*, 47 ANCIENT CHRISTIAN WRITERS 104 (G.W. Clarke trans., 1989). The pertinent section is as follows:

Valerian has sent a rescript to the Senate, directing that bishops, presbyters, and deacons are to be put to death at once but that senators, high-ranking officials, and Roman knights are to lose their status as well as forfeit their property, and that if, after being so dispossessed, they should persist in remaining Christians, they are then to suffer capital punishment as well. Furthermore, that matrons are to be dispossessed of their property and dispatched into exile and that any member of Caesar's household who had either confessed earlier or should have done so now, are to have their possessions confiscated ... and assigned to the imperial estates.

³¹ *Id.*

cution initiated by Valerian.³² These constitutions, which ordered the restoration of confiscated property, also contained terminology regarding "places of worship" (*cuncti a religiosis locis*)³³ that was highly ambivalent and as such failed to address the legitimacy of "church property."

It is apparent from the aforementioned conflicting documentation that there is no conclusive evidence which provides unequivocal proof of the existence of buildings which "belonged" in any real sense to the patrimony of any of the ecclesial congregations. Consequently, the "church property" controversy was to remain unresolved until the incident at Antioch.

INDICATIONS OF FERMENT—SOWING THE SEEDS FOR ANTIOCH

While the available evidence does not warrant a firm conclusion that special edifices assigned for the liturgical and apostolic activities of the Christian congregations and communities "belonged" in any strict sense to the ecclesial collectivities in any of the urban areas of the empire, there are ample indications of some measure of ferment in this respect by the middle decades of the third century. Among these indications was the realization of the disadvantages of continued reliance upon the largess of prosperous individual Christians who tended to stray from the church when incidental persecutions arose and as heterodox factions emerged.³⁴ Another indication was the risk of embarrassment to church officials when following customs which had served reasonably well in earlier times. A final indicator came in the vibrant

³² EUSEBIUS, 1 THE ECCLESIASTICAL HISTORY AND THE MARTYRS OF PALESTINE, at VII:13 (Lawlor & Oulton trans., 1927) [hereinafter 1EHMP]. The text of Gallienus' letter is as follows:

The Emperor Caesar Publius Licinius Gallienus Pius Felix Augustus to Dionysius and Pinnas and Demetrius and the other bishops. I have given my order that the benefit of my bounty should be published throughout all the world, to the intent that the *places of worship* (*cuncti a religiosis locis*) should be given up, and therefore ye also may use the ordinance contained in my rescript, so that none may molest you.

See also EUSEBIUS, 2EHMP, *supra* note 5, at VII:13 (interpreting the rescript as restoring "churches" to the Christians and concluding that Gallienus' intervention constituted a kind of recognition of the churches as bodies "capable of holding property"). This conclusion is qualified, however, by the statement: "But, apparently, Christianity was not given the position of *religio licita*," and very shortly after the issuance of the rescript, the emperor condemned the soldier Marinus to a *martyr's* death for his adherence to a *religio illicita*. *Id.*

³³ 1EHMP, *supra* note 32, at VII:13.

³⁴ See *supra*, notes 23-24.

expansion of the Christian community at the time³⁵—an expansion which clearly underscored the need for maintaining some stable edifices from which to manage the administrative affairs of such a following.

These indications demonstrate that the construction of a church edifice, or more likely, the substantial renovation of an existing building, to accommodate Christian assemblies and to shelter the ecclesial leaders at Antioch in the middle decades of the third century, would be an absolute necessity in light of the developments occurring within the Christian church. Furthermore, the likelihood of the imperial authorities at the time, especially the favorably-disposed Palmyran dynasts who reigned from 260-272, to contentedly accept the fiction that the church building was a privately owned structure, enhanced the ability of the Christian factions to acquire so-called “church property.” This factor, combined with Paul of Samosata’s favorable status during the regime of Vaballathus and Zenobia, made it unlikely that the legitimacy, however fragile, of “ecclesial” control of any such building would be challenged by secular officials. The time for change was ripe indeed.

THE DECISION AT ANTIOCH—AN UNUSUAL AND PROVOCATIVE CASE

In the aftermath of the conciliar gathering at Antioch, Paul, although condemned by the synod and opposed by Domnus, who claimed legitimate succession to the episcopal office in Antioch, would not vacate the property.³⁶ The orthodox segment of the Christian community, infuriated by Paul’s obstinance, initially lacked access to any viable measures for securing his removal. As *collegium illicitum*, the local church was deprived of the legal status required to enforce any claim or to seek civil-legal redress.

The opportunity, however, soon arose for the officials to attempt to enforce their claim when Aurelian’s armies defeated

³⁵ Graphic indication of this is given in a description of the local congregation in Rome by Cornelius, who served as bishop about the year 250. 2EHMP, *supra* note 5, at VI:43:11-12, quotes Cornelius, who, in describing the congregation at Rome circa 250 A.D., reports:

That there were forty-two acolytes, fifty-two exorcists, readers and door-keepers, above fifteen hundred widows and persons in distress, and an immense and countless laity.

Id.

³⁶ 1EHMP, *supra* note 32, at VII:30:19.

Zenobia's armies. Roman imperial authority was restored in Antioch, clearly indicated by Aurelian's visit in 272. His presence in Antioch also indicated a more dramatic change for the ecclesial leaders when Domnus and the orthodox church leaders made a direct appeal seeking to recover the "church building" from Paul. In all likelihood, Domnus and his associates, in pleading their cause, wisely identified Paul as a crony and a sycophant of the defeated and deposed Zenobia. Thus, Aurelian, though no friend of the Christians, would have recognized in this suit another opportunity to tangibly demonstrate the demise of the oriental regime which had held sway in Antioch and its environs for some twelve years. Consequently, he handed down what Eusebius, deemed an "extremely just decision" (the salient points of which have been preserved).

But as Paul refused on any account to give up possession of the church building (*oikon ekklesias*), the emperor Aurelian, on being petitioned, gave an extremely just decision regarding the matter, ordering the assignment of the building to those with whom the bishops of the doctrine (*tou dogmatos*) in Italy and Rome should communicate in writing. Thus, then, was the aforesaid man driven with the utmost indignity from the church by the ruler of the world. Such indeed was the disposition of Aurelian towards us at that time. But as his reign advanced, he changed his mind with regard to us, and was now being moved by certain counsel to stir up persecution against us.³⁷

WHY THE DECISION AT ANTIOCH—POLITICAL EXPEDIENCY OR THE PRAETORIAN EDICT?

The decision which Aurelian rendered in the "Antioch church building case" contains some unusual and provocative elements, particularly the civil-legal considerations involved. That a *collegium illicitum* could press a claim of this sort and receive final vindication in civil law is, in itself, an intriguing circumstance and thus demands an explanation. Among these proposed explanations is the suggestion that Aurelian based his decision on his recognition of the political opportunity involved in accepting the *libellus*³⁸ and in resolving the controversy in favor of the orthodox plaintiffs. Nonetheless, however attractive the perception of po-

³⁷ *Id.* at VII:30:19-20.

³⁸ *Meaning 'petition'* (latin phraseology added). See OXFORD DICTIONARY (Oxford Univ. Press 1994).

litical expediency which could be attained in view of the prevailing circumstances may have been, only the most callous of emperors would be likely to flagrantly disregard the rule of law.³⁹ Thus, there would have to be some other identifiable legal basis for the decision beyond mere "expediency;" the law was too highly regarded to be accorded such cavalier treatment.

Although the sources are entirely silent on the point, the most appealing hypothesis would be to suggest that recourse was found in some form of the *praetorian edict*. This extraordinary legal remedy was the furthest reaching magisterial remedy in Roman law introduced into practice in the latter stages of the gradual revolution which modified the Roman legal system.⁴⁰ The edict emerged as an all-encompassing expedient which provided recourse even when called upon to resolve matters "outside" the law.⁴¹ In such cases, the praetor would rule that an existing possession, whether rightful or wrongful, ought not to be disturbed except by making a proper claim to it in a court of law. If for example, Titius (hypothetically "the Christian community of Antioch") was in possession of a house and Maevius (hypothetically, "Paul of Samosata") was to take it away, the praetor, by means of his interdict, could force Maevius ("Paul") to return it to Titius ("the Christian community of Antioch"). Interestingly, the praetor had the power to enforce such a return of property regardless of the legitimacy of the claim of the original possessor to actual ownership. Although the property could be taken from the legitimate owner, utilization of this extraordinary remedy could not subvert a legitimate claim, which was always susceptible to proper legal redress by means of the *vindicatio*⁴² or any other appropriate action. Thus, Maevius ("Paul") could endeavor to get the home back by commencing formal legal process. However, this was not an option for Paul once he was dispossessed of the "house church" since the ecclesial community held a superior claim to the property.

If the hypothesis is correct that the implementation of the *praetorian edict* was the means for the resolution of the controversy, the decision does not carry with it any technical affirmation

³⁹ These madmen and scoundrels of whose ilk Aurelian was assuredly not to be counted may include Elagabalus of the third century, Nero, or Caligula.

⁴⁰ HISRL, *supra* note 1, at 97-99.

⁴¹ *Id.* at 97.

⁴² The hypothetical case given is derived from HISRL, *supra* note 1, at 241-42. Of course, the identification derived from the Antioch church-building case have been added.

of the legitimacy of the "ownership" of the building by the "Christian community of Antioch." In fact, Eusebius reports that Aurelian ordered the building to be assigned to Domnus and his associates—a subtle conceptual nuance which altogether precluded the possibility of determining technical *dominum*.⁴³ Thus, the civil-legal resolution of the dispute could have emerged with its concomitant political expediency, and without any compromise of Aurelian's commitment to the rule of law. On the hypothesis that recourse to the praetorian edict was utilized, the decision can be understood as resting upon a plausible basis quite in accord with contemporary juridical principles and legal doctrine.

ANTIOCH—AN EXPLANATION ROOTED IN DOCTRINAL *COMMUNIO*

Another interesting facet of this case pertains to the ecclesiological principle (of doctrinal *communio*) implicit in the decision. When rendering his decision, Aurelian alluded to the necessity of having access to the bishops of Italy and Rome, making this contact a constituent element in the process of resolving the dispute.⁴⁴ It is remarkable that the emperor would make use of phraseology (*tou dogmatos*) which was incontrovertibly suggestive of a doctrinal *communio*, linking the local church in Antioch with specified other ecclesial communities.

In view of the fact that Aurelian's actions were entirely without precedent, a thorough examination, beginning with a look at the secular, societal ambiance in which the decision of Aurelian was rendered is warranted. The emperor, amidst this environment, could feasibly have recognized an opportunity to strengthen the bonds between Rome, the seat of imperial governance, and Antioch, which had so recently experienced a twelve-year period of relative political independence. During this period of independence, Paul of Samosata was closely associated with the regime from Palmyra which had held sway in and around Antioch. In light of Paul's influence, Aurelian may have expected to further desirable secular, political goals if he formulated his decision in such a way as to forge a stronger link between the vibrant Christian congregation in Antioch, which Paul had most probably affected with his charismatic personality and charm, and the congregations in Italy and Rome. Nonetheless, that he would

⁴³ 1EHMP, *supra* note 32, at VII:30:19.

⁴⁴ *Id.*

formulate his solution to the conflict in terms which are so sophisticated in their theological significance can hardly be explained in terms of some perceived political advantage. Rather, it may have been Domnus and his conferees who suggested such an approach, having reasoned that Aurelian would be more likely to favor their petition if he were to perceive the existence of these political advantages. The sources, however, are silent with respect to the factors which ultimately compelled Aurelian to render the "extremely just decision" attested to by Eusebius.

Yet, the lack of evidence regarding the impetus of Aurelian's decision does not diminish its significance in any way. By combining the legal directives contained in the decision with an unexpected ecclesiological nuance, the emperor had provided a significant ecclesiastical document for posterity, richer still in its implications because of its derivation from a source certainly external to the church and hardly "friendly."⁴⁵ Aurelian, by rendering the civil-legal decision which ended Paul of Samosata's obstinacy and returned the "church building" at Antioch to the custody of the orthodox prelates, legitimized the concept that a local church could, in some circumstances, enjoy protected possession of its own building. Moreover, perhaps unwittingly, the emperor gave affirmation to the ecclesiological principle that a doctrinal unity was basic to the *communio* existing between the ecclesial communities, their bishops of Italy and Rome, and the local church of Antioch.

THE AFTERMATH OF ANTIOCH

There is unequivocal evidence to show that within a generation of the incidents at Antioch involving Paul of Samosata, Domnus, the orthodox leaders and the Emperor Aurelian, notwithstanding the frailty of the basis in civil law for such arrangements, the practice of maintaining a building for ecclesiastical use under the control of a local church community had spread to other areas. Utility and necessity clearly prompted church authorities and administrators to undertake the risk inherent in providing facilities of this sort.⁴⁶

⁴⁵ *Id.*

⁴⁶ DICTIONNAIRE, *supra* note 22, at 4, part 2, p. 2292f., provides a survey of locales where, by the onset of the "great persecution" of the fourth century, church edifices under "common" control have been established. The first was introduced in Alexandria, he suggests, during the interval 282-300. Leclercq identifies approxi-

By the beginning of the fourth century, an edifice which was ultimately demolished by the praetorians at the very beginning of the systematic persecution of the Christians unleashed by Diocletian and Galerius in 303 existed in Nicomedia in Bithynia.⁴⁷ Yet, it is apparent that there were other structures in Nicomedia and doubtlessly elsewhere which were privately owned homes, utilized by the Christians along with the "church buildings" for ecclesial purposes. These properties, much like the "church properties," were subjected to searches, and in some instances, to confiscation, as the persecution raged.⁴⁸ This continued utilization of privately-owned buildings for purposes of church and assembly can hardly be surprising given the dubious and fragile legal status of the Christian congregations at the time. In simple terms, it was this status which both required and assured the ambivalence which continued to exist in this respect.

On the very eve of the "Constantinian settlement," however, there was in place, in various locales throughout the empire, a paradigm arrangement destined to prevail in the heady days of tolerance and eventual preference which emerged in official quarters vis-à-vis the Christian communities. Thus, there is every rea-

mately twenty-five other sites including Jerusalem, Edessa, and Smyrna where there is evidence of "common" church buildings.

⁴⁷ LACTANTIUS, *DE MORTIBUS PERSECUTORUM* 18-21 (J.L. Creed ed. & trans., 1984). Persuaded by Galerius, his *caesar*, Diocletian instituted the persecution with a series of imperial edicts. Diocletian and Galerius reportedly discussed burning down a "church building" (Lactantius uses the term, *ecclesia*) near the imperial palace at Nicomedia, but apparently feared that a conflagration might erupt. *Id.* at 20, 21. Instead, at day break on February 23, 303, the praetorians, in full armor entered and ransacked the building, then levelled it with axes and other iron tools. *Id.* Lactantius reports that the demolition was complete within a few hours. An excellent interpretation of the persecution initiated by Diocletian and Galerius is provided by G.E.M. de Ste. Croix, *Aspects of the Great Persecution*, 47 *HARVARD THEOLOGICAL REVIEW*, at 75-114 (1950).

An eyewitness account of the razing of at least two other "church buildings" during the "great persecution" is given in the writings of Optatus of Milevis, *Acta Purgationis Felicis*, n.10-11, 26 *CSEL*, at 199: "...ego dixi: non, sed vidi iam exempla et Zama et Furnis dirui basilicas et uri scripturas vidi..." Zama and Furnis are communities in North Africa. Although the term, "basilica," is utilized, it seems clear that the razed properties were rather simple structures. The inference in the text is that these were "common" properties, not belonging to individuals. It would then be in accordance with the mandate in the imperial edicts promoting the persecution, which called for the razing of churches and the burning of scriptures.

⁴⁸ See OPTATUS OF MILEVIS, *GESTA APUD ZENOPHILUM*, 26 *CSEL*, at 186-88 (giving a detailed account of initiatives taken by local magistrates in Cirta in North Africa in the conduct of the policy of persecution). At least six buildings, probably private homes of Christian adherents, were subjected to search and seizure procedures, although nothing was confiscated.

son to conclude that this phenomenon, which entailed as its essential element the maintenance of common control of the ecclesiastical structures, derived considerable momentum from the unusual case of the church building at Antioch, for it was there for the first time that ecclesial interests prevailed and were afforded protection by the Roman civil-legal system. Therefore, what Eusebius describes as the "very just decision" of Aurelian gave impetus to a significant development in ecclesiastical administrative history, and as such, merits commensurate recognition.

